DOCKET EILE CODY ODIOINA

### MFRI Inc.

November 21, 1997

Ms. Magalie Roman Salas Secretary Federal Communications Commission 1919 M Street, NW, Room 222 Washington, DC 20554

Re: Petition for Reconsideration of FCC 97-342

Dear Ms. Salas:

Enclosed is an original and 10 copies of MFRI Inc.'s Petition for Reconsideration of FCC 97-342, Amendment of the Commission's Rules Regarding Installment Payment Financing For Personal Communications Services (PCS) Licensees (WT Docket No. 97-82). Request you provide each of the Commissioners with their own copy.

Sincerely,

David G. Fernald, Jr.

President

No. of Copies rec'd O + 10

# Before the FEDERAL COMMUNICATIONS COMMISSION Washington, DC 20554

In the Matter of	)	ij š	
	)	•	63
Amendment of the Commission's	)		<i>*</i>
Rules Regarding Installment Payment	)		
Financing For Personal Communications	)		
Services (PCS) Licenses	)	WT Docket No. 97-82	
	)		

#### PETITION FOR RECONSIDERATION

### Introduction

MFRI Incorporated ("MFRI"), pursuant to section 1.429 of the Commission's rules, 47 C.F.R. § 1.429, respectfully requests reconsideration of certain aspects of the Second Report and Order in the above-captioned proceeding.¹ We believe the Commission should provide C block licensees with a deferral menu option; permit licensees to utilize their full down payment in the Disaggregation and Prepayment options; adjust the Prepayment option to account for the net present value of foregoing installment payments; permit licensees the use of aggregate down payments made to-date to purchase outright any entrepreneur license; and provide flexibility with regards to which 15 Mhz of spectrum to Disaggregate.

MFRI is a small business which holds the C- and F-block PCS licenses in the Stroudsburg, PA Basic Trading Area ("BTA") and the F-block license in the Pottsville, PA BTA. As one of the smaller entrepreneurial companies that obtained licenses through the C and F block auctions, we feel we can provide useful comments and perspective regarding C block restructuring.

<sup>&</sup>lt;sup>1</sup> Amendment of the Commission's Rules Regarding Installment Payment Financing For Personal Communications Services (PCS) Licenses, Second Report and Order and Further Notice of Proposed Rule making, WT Docket No. 97-82, FCC 97-342, rel. Oct. 16, 1997 ("Restructuring Order," "Further Notice").

#### Incumbents Dominate the Wireless Landscape

Incumbents were the undisputed victors in the Restructuring proceeding. The delays associated with C block licensing, coupled with the cloud of uncertainty introduced by the Commission's restructuring proceeding, has provided incumbents with a considerable head start in accessing capital and entering the marketplace. some Wall Street analysts have already written-off the prospects that the Commission's goal of increased competition will be fulfilled:

Even if elements of the current [C-block restructuring] plan are revisited, most C block licensees will still have to revise their business plans and face tremendous difficulties in financing their businesses. Moreover, larger players opting for the prepay option will be shadows of their former selves, and legal challenges could pose significant delays to the reauction process. This adds up to less competition than expected, later than expected, and bolsters our optimism on the prospects of established cellular and PCS carriers.<sup>2</sup>

The Commission has a chance to avert such occurrence by providing C block licensees with commercially reasonable restructuring alternatives.

See Brian G. Coleman, BT Alex Brown, "FCC Confirmations/C Block." (October 3, 1997).

#### Deferral

MFRI submitted comments in this proceeding endorsing the position advanced by the National Association of PCS Entrepreneurs ("NAPE"), which stated:

In consideration of these circumstances, and to ensure that the FCC and the American public realize the competition envisioned by those who created the entrepreneurs' block, NAPE proposed that the FCC restructure the C & F Block financial obligations for license payment by suspending all payments due until the end of the fifth year of license (coupled with strict enforcement of network build out requirement); with the balance of principal and interest paid over the remaining five years of license. such restructuring would serve the best interests of the government, the C & F Clock licensees, and the American consumer.<sup>3</sup>

This proposal is similar to the plan crafted by the Small Business

Administration.<sup>4</sup> We were disappointed that the Restructuring Order ignored the balanced alternatives put forth by the two advocacy groups which represent small business interests.

The Commission cited auction fairness and integrity as reasons why it was inclined to provide "more modest" relief.<sup>5</sup> If the Commission truly is sincere about defending auction integrity, then we propose that the January 15, 1998 election deadline be postponed until the Commission resolves its investigation into certain bid signaling practices made by bidders in the D, E, and F block auction.<sup>6</sup> Such signaling raises serious questions about the integrity of auctions and may partially explain the lower price paid in the D, E, and F block auction compared to the A, B, and C block auctions. We urge the Commission, in the interests of auction fairness and integrity, to investigate and resolve this important matter prior to the election deadline.

<sup>&</sup>lt;sup>3</sup> See National Association of PCS Entrepreneurs, Position Paper, (May, 1997) at p. 1.

<sup>&</sup>lt;sup>4</sup> See Jere W. Glover, Chief Counsel, U.S. Small Business Administration and Jenell S. Trigg, Assistant Chief Counsel, Telecommunications, to The Honorable Reed E. Hundt, Chairman, Federal Communications Commission, ex parte Letter, September 8, 1997.

<sup>&</sup>lt;sup>5</sup> See Restructuring Order at para. 5.

<sup>&</sup>lt;sup>6</sup> See David Bowermaster, MSNBC, "FCC Bid-Rigging Probe Takes Aim; Omnipoint Being Investigated, Sources Tell MSNBC," (November 3, 1997). "Earlier this year, MSNBC published a computer-analysis of bidding in the D, E, and F block auction which revealed several examples of unorthodox bidding by both Omnipoint and Western that may have involved different forms of signaling."

### Licensees Should Be Permitted to Apply 100 Percent of Their Down Payments in the Disaggregation and Prepayment Options

Withholding a portion of a C block licensees' down payment is punitive and inconsistent with the Commission's goal of encouraging facilities-based wireless competition. Such provisions also are inconsistent with the bipartisan compromise put forth by Congressmen Tauzin and Markey, which stated:

Under this proposal, current licensees could purchase at 'full price' as many of their existing licenses as they desire with cash up front, for the net present value of the 'net bid' prices for such licenses, which could be paid for with the licensees' deposit money (plus any new money that the licensee might immediately muster).

The decision reached by the majority of Commissioners to withhold a portion of the down payment-- against the will of Congress-- seems more grounded in political in-fighting that it is in good public policy. We urge the Commission to adjust the Disaggregation and Prepayment options to comport with the will of Congress and the will of the majority of commenters in this proceeding.

### The Commission Should Adjust the Prepayment Option To Account for the Net Present Value of Foregoing Installment Payments

By requiring bidders to play the face value of their bids, rather that the net present value as suggested by a number of commenters and Members of Congress, the Commission is effectively raising the already inflated C block prices. Judging by the failure of a number of C block licensees to attract capital with bids discounted at the net present value, it is highly unlikely that such bidders will be financeable with

<sup>&</sup>lt;sup>7</sup> See The Honorable W. J. "Billy" Tauzin and Edward J. Markey, ex parte Letter to Chairman Reed E. Hundt, September 16, 1997. (emphasis added).

licenses priced at their "face value" on their balance sheets. This option will not provide the relief necessary for many C block licensees to resume network build-out and begin offering service to the public. We agree with Chairman Hundt that:

By requiring licensees that elect the option to prepay their licenses at the "nominal" bid price, the plan ignores the time value of money and <u>inflates</u> the effective price paid by the licensees that it purportedly seeks to assist. Put simply, the value of a bid paid out over ten years is significantly less-- around 40% less-- than that same bid in cash.<sup>8</sup>

### The Commission Should Permit Licensees to Use its Aggregate Down Payment Amounts to Purchase for Cash Any C or F Block License

The Commission cited differences in "nature and extent of any financing difficulties" in declining to make any of the options available to F block licensees. However, several of the smaller entrepreneurs have both C and F block licenses. Many of these companies are experiencing difficulties in obtaining financing for their F block properties given the stigma in the financial community associated with the C block licenses. Additionally, the interest cost involved in carrying the C block debt burdens all of a small business' operations, not just those operations associated with the C block.

Allowing the use of a licensees C block down payment to purchase for cash its F block licenses will result in entrepreneurial companies with significantly reduced leverage and hence improved access to the capital markets. These companies will be more viable and able to provide facilities based competition in their license territories. The Commission will also have a reduced paperwork burden as it will no longer have to service the loans on the C and F block licenses.

<sup>&</sup>lt;sup>8</sup> See Affirming and Dissenting Separate Statement of Chairman Reed E. Hundt Re: C Block Financing Issues, Adopted September 25, 1997, Released October 16, 1997.

## <u>Licensees Should Have Flexibility with Regards to Which 15 Mhz of Spectrum to Disaggregate.</u>

The Commission has proposed requiring disaggregation of the 15 MHz of spectrum adjacent to the F block in order to "provide opportunities for existing F block licensees to aggregate spectrum in a manner that could benefit their planned or prospective service offerings". However, it should be noted that at least two licensees have both the C and F block licenses for one or more BTAs. In the spirit of the Order and fairness we urge the Commission to allow a C block licensee who also holds the F block licensee for the same BTA to retain the 15 MHz of spectrum adjacent to the F block when utilizing the disaggregation option.

#### Conclusion

The Restructuring Order did not provide C block licensees with any commercially reasonable alternatives to bankruptcy. already, two of the three largest C block bidders have sought Chapter 11 protection, and many others may be close. As a small business that depends on a healthy C block, we urge the Commission to take action to avert an impending crisis, which will further benefit incumbent players and delay competition for consumers.

Respectfully Submitted,

David G. Fernald, Jr.

President, MFRI Inc.